IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 596 of 2002

in

SPECIAL CIVIL APPLICATIONNo 8385 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GE LIGHTING INDIA LTD

Versus

GUJARAT MAZDOOR PANCHAYAT

Appearance:

MR.P. CHIDAMBARAM, SR.COUNSEL FOR NANAVATI ASSOCIATES for Appellant

MR P. CHIDAMBARA, PARTY-IN-PERSON for Respondent No. 1

MR GM JOSHI for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 24/01/2003

C.A.V. JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. On the request made by the parties concerned, we have heard this Appeal finally.

2. This Letters Patent Appeal is filed against an order passed by the learned Single Judge in Spl. Civil Application No. 8385/2001 on 21.1.2001. A few skeleton facts which give rise to filing of the present appeal are as under :

2.1 The present appellant GE Lighting India Limited awarded the security contract to respondent No.2 herein Bombay Intelligence Security India Limited, for providing security services. Appellant company employs approximately 650 permanent employees and also engages contract workers in security, loading and unloading activities and canteen. The appellant company is a registered establishment under the Contract Labour (Regulations and Abolition) Act, 1970 and respondent No.2 is holding a valid licence under the provisions of the said Act.

2.2 The respondent No.1 - Gujarat Mazdoor Panchayat, a labour union, raised a dispute on 19th December, 1995 for abolition of contract labour system in loading, unloading, canteen and security prevailing in the appellant company. In turn, the State Government referred the dispute to State Advisory Contract Labour Board under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970.

2.3 In the above said process, the Advisory Board, in 1996, constituted a committee, which visited the appellant company at Nadiad. In the said Reference, the appellant company contested the Reference by filing written statement on various grounds while respondent No.1 Gujarat Mazdoor Panchayat also urged for discontinuing of the labour contract system in the establishment.

2.4 Thereafter, the respondent No.1 Gujarat Mazdoor Panchayat, on 2.8.1997, raised an industrial dispute for obtaining relief that 110 workmen working in the establishment be made permanent from the date of such

workmen were taken in service and be also given benefit of permanent employees. Ultimately, the said dispute came to be referred for adjudication to the Industrial Tribunal, Nadiad, being Reference (LTN) No.730/98 (Old No. 272/98).

2.5 Meanwhile, during the pendency of the aforesaid Reference No.730/98, the State Government on 13.7.1999, issued Notification No.GU-99-115-CLA-1097-2128-M(3) under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 in relation to the security services provided to the appellant company by the respondent No.2 contractor. The aforesaid Notification came to be issued after the State Advisory Board visited the establishment of appellant in 1996 and prepared a report.

2.6 Thereafter, on 21.7.1999, the respondent No.1 Gujarat Mazdoor Panchayat preferred an Application Exh.35 before the Industrial Tribunal in Reference Case No. 730/98 for urgent interim relief i.e. to absorb the workmen concerned in the said Reference as permanent employees of the appellant company w.e.f. 13.7.1999 and to pay them wages and other benefits of permanent employees of the workmen of the appellant company. The learned Industrial Tribunal placed reliance on the decision of the Apex Court in the case of Air India Statutory Corporation Ltd. & Ors. vs. United Labour Union & Ors., reported in (1997) 9 SCC 377.

2.7 The present appellant company aggrieved by the above said Notification dated 13.7.1999 issued by the State Government under section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 preferred Spl. C.A. No.5418/99 in this Court on 23.7.1999 under Article 226 of the Constitution of India challenging the validity of the said Notification, inter alia, on the grounds that neither the appellant company was heard by the Advisory Board nor a copy of the report of the Advisory Board was supplied to the appellant company.

2.8 On 28.10.1999, in the said Special Civil Application, this Court has granted interim relief to the extent of staying the operation and implementation of the impugned Notification, which is of dated 13.7.1999 abolishing the contract Labour so far as security services provided in the establishment of the appellant company was concerned. This Court while granting interim relief to the present appellant in the above said Spl. C.A. No. 5418/99, further clarified that the interim relief would be subject to the condition that the status quo as regards the service conditions of the concerned

workmen obtained on that date would be maintained and that the contractor would not transfer any of the concerned workmen till further orders. Further vide interim relief, the Court authorised the contractor for taking disciplinary action against any of the workmen, if circumstances so demand.

2.9 After passing of this order on 28.10.1999 in Spl. C.A. No. 5418/99, the Industrial Tribunal, Nadiad, proceeded to decide the Application at Exh.35 in Reference Case No. 730/98 and disposed of the said Application at Exh. 35 vide order dated 14.8.2001, by which a direction was issued by the Industrial Tribunal, Nadiad, to the extent that, the concerned employees working under the labour contract in the security department of the appellant company be treated as permanent employees and salary as well as other benefits as per the terms of employment be paid accordingly till the disposal of the main Reference.

2.10 Being aggrieved by the said order passed by the Industrial Tribunal, Nadiad, on 14.8.2001, below Application Exh. 35 in Reference (LTN) No. 730/98, present appellant company preferred Special Civil Application No. 8385/2001 in this Court under Articles 226 and 227 of the Constitution of India, and the order impugned came to be challenged on various grounds.

3. The learned Single Judge of this Court, vide his impugned order dated 22.01.2002, dismissed the said Special Civil Application No. 8385/01, at the admission stage.

4. Amongst other various grounds, the core question which arose for consideration and decision in Spl. Civil Application No. 8385/2001 was whether in the facts and circumstances of the present case, the workmen employed under the labour contract for security in the appellant company could ipso facto and automatically be treated as permanent employees of the company right from the date of the issuance of the Notification under Section 10(1) of the Contract labour (Regulation & Abolition) Act, 1970.

5. The learned Single Judge approached the controversy with the decision that on the date of Notification and in the facts and circumstances of the present case, the contract labour system came to an end and resultant effect of it would be that the workmen employed through the contract labour become employees of the principal employer, and on the date of the issuance of the Notification, learned Single Judge further held

that it could be said that, to that extent, finality was reached.

CONTENTIONS :

6. Learned Senior Counsel for the Appellant Mr. P. Chidambaram has placed heavy reliance on a decision of the Apex Court in the case of STEEL AUTHORITY OF INDIA LIMITED & ORS. vs. NATIONAL UNION WATERFRONT WORKERS & ORS., reported in 2001(7) SCC 1 and a decision of the Apex Court in the case of NITINKUMAR NATHALAL JOSHI AND ORS. vs. OIL AND NATURAL GAS CORPORATION LTD. AND ORS., reported in (2002) 3 SCC 433.

6.1 Learned Sr. Counsel Mr.P.Chidambaram emphasized that by the above referred case of Steel Authority of India Ltd. (supra), the earlier case of Air India Statutory Corporation Ltd. & Ors. vs. United Labour Union & Ors. reported in (1997) 9 SCC 377, is overruled and it is categorically held that by issuance of notification, contract labour workmen would not ipso facto be the direct employees of the employer.

6.2 The Notification is issued by the State Government on 13.7.1999 and on 23.7.1999, the said Notification came to be challenged.

6.3 In the matter of abolition of contract labour, the appellant company contested, appeared and filed its written statement, pointing out, inter alia, many contentions. The operation and implementation of the Notification was stayed by the interim order of this Court on 28th October, 1999 on certain conditions.

6.4 Meaning thereby that no action could be taken on Notification itself.

6.5 In the case of Steel Authority of India Ltd. (supra), the Apex Court unequivocally stated that the earlier decision in Air India case stands overruled, but the effect of the Steel Authority of India case will be prospectively applied and any direction issued by any industrial adjudicator/any court including the High Court for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

6.6 For the meaning of "has been given effect to and it has become final" the learned Senior Counsel relied on

a decision in the matter of Nitinkumar Nathalal Joshi (supra), wherein the Apex Court applied the ratio of the decision of the Steel Authority of India Ltd and the employees therein were not considered to be the direct employees of the employer ipso facto by virtue of issuance of Notification by the State Government abolishing the contract labour system. Therefore, it was contended that direction contained in the Notification dated 13.7.1999, in the present case, could not be said to have been given effect to or had reached to any finality.

6.7 Even though, the Notification issued by the State Government on 13.7.1999 was stayed by this Court, learned Industrial Tribunal, proceeded to decide the Application Exh.35 in Reference Case No. 730/98 and decided that on the basis of Air India case, the workers/employees of the contractor were direct employees of the employer from the date of the issuance of the Notification by the State Government.

6.8 In Spl. Civil Application No. 8385/2001, attention of the learned Single Judge was drawn to the decision of the Apex Court in Steel Authority of India Ltd but the learned Single Judge erred in holding that the contract labour system came to an end from the date of the Notification and that the employees of the contractor be treated as employees of the employer. It was urged that granting relief below Exh.35 amounted to granting the whole Reference.

6.9 It was urged that the directions given relying on Air India case were not given effect to and had not become final in this case and, therefore, the present controversy is well covered by the decision of Steel Authority of India Ltd., even though considering the prospective effect of the decision.

6.10 It was urged that though the implementation and operation of the Notification issued by the State Government was stayed by this Court, the Industrial Tribunal, Nadiad, ought not to have implemented the Notification of the State Government.

6.11 It was urged that it was brought to the notice of the learned Single Judge while arguing in Spl. C.A. that till the pronouncement of the judgment in Steel Authority of India Ltd. on 30.8.2001, Notification issued by the State Government was not implemented, on the contrary, the same was stayed by this Court in other Special Civil Application, as mentioned above, and hence,

as observed by the Apex Court in Steel Authority of India Ltd., there were no directions in pursuance of Air India case, which were given to effect and had become final. It was urged that the maintainability of the Reference as well as of Application Exh. 35 were itself challenged in Special Civil Application. It was ultimately urged that the Appeal be allowed and the order impugned passed by the learned Single Judge be set aside.

7. While on behalf of the respondent No.1 - Gujarat Mazdoor Panchayat, Party-in-person Mr. P. Chidambaram, argued that :

7.1 The Industrial Tribunal was required to adjudicate whether the contract was genuine or sham and, therefore, the interim relief granted vide Application Exh. 35 by the Industrial Tribunal cannot be said to be granting the final award.

7.2 The decision of the Supreme Court in Steel Authority of India Ltd. (supra) was given effect prospectively. In this case directions were given effect to and it had become final in pursuance of the earlier decision of the Apex Court in the case of Air India. Therefore Steel Authority of India Limited would not apply to the present case.

7.3 In the Notification issued by the State Government on 13.7.1999, a Reference has been made by Air India case and, therefore, the direction was, to give effect to the decision of the Air India case of the Apex Court.

7.4 That on the date of the Notification i.e. on 13.7.1999, since the contract labour system came to an end, the workmen of the contractor in security department became the direct employees of the employer by virtue of the very Notification.

7.5 The Industrial Tribunal passed order below Exh.35 Application on 14th August, 2001, and directions issued therein in pursuance of the Air India case, had become final on 14th August, 2001, and the decision of the Apex Court in Steel Authority of India Limited was pronounced on 30.8.2001 and, hence, the observations made in Steel Authority of India Ltd. by the Apex Court, would not be applicable.

7.6 The Notification was issued on 13.7.1999 and the stay on the Notification by this Court was obtained on 28th October, 1999 and was corrected on 24th of December,

1999 though the petition being Spl. C.A. No. 5418/99 came to be filed on 23rd July, 1999. It was urged that, in fact, the appellant establishment flouted the law, did not implement the Notification, did not obtain interim order till 28th of October, 1995 and 24th December, 1999 for which the workman cannot be made to suffer, depriving them of their legitimate benefits.

7.7. It was contended that when stay on the Notification was granted by this Court on 28.10.1999 and was corrected on 24.12.1999, by virtue of Notification dated 13.7.1999, ipso facto, the contract labour system came to an end, the learned Industrial Tribunal rightly held that from 13th July, 1999, the employees of security department be treated as permanent employees of the employer although the stay was granted long time after 13.7.1999. It was contended that the stay granted by this Court on 28.10.1999 against the implementation of the Notification dated 13.7.1999, can only come into operation prospectively and not retrospectively. Notification could be stayed only from 28.10.1999 and not before that and, therefore, by virtue of Notification itself when there was no stay, the contract labour system came to an end and the employees of the Security Department became the employees of the employer instead of the employees of the contractor.

7.8 The abolition of contract labour system by virtue of Notification, cannot be made dependent upon any further action on the part of the management and as soon as the contract labour system is abolished, the security personnel working under such contract labour system became permanent employees of the appellant company. It was contended that therefore by virtue of the stay on the implementation of the Notification, the effect of abolition of contract labour system is not affected at all.

7.9 It was contended that the workmen cannot be penalized for non-action on the part of the management to implement the above said Notification and obtaining stay from this Court long back on 28.10.1999 and 24.12.1999. Mr. P.Chidambaram (Party-in-person) placed heavy reliance on the decisions of the Apex Court (i) in the matter of ISPAT KHADAN LABOUR MAZDOOR UNION vs. UNION OF INDIA AND ANR., reported in 1999 (83) FLR 190, and (ii) in the matter of GUJARAT ELECTRICITY BOARD THERMAL POWER STATION, UKAY, GUJARAT vs. HIND MAZDOOR SABHA AND OTHERS, reported in 1995 (5) SCC 27. It was ultimately urged by Mr. P. Chidambaram, Party-in-person, on behalf of respondent No.1 that the Appeal deserves dismissal.

8. While on behalf of respondent No.2, learned Advocate Mr.G.M. Joshi filed an affidavit of one Mr. D.K. Pandey, Time Keeper-cum-Accounts Assistant of the contractor - Bombay Intelligence Security India Ltd. and contended that the company is rendering the services in the field of security through out India and has its own P.F. Code Number and is registered under the Employees State Insurance Corporation Act. It is the specific contention of respondent No.2 Contractor that the security employees are the employees of the contractor respondent No.2 and they have trained them for rendering the security services and could not be possible for them to dispense with the services of these employees who are rendering their services at the appellant company.

DECISION :

9. Having heard all the parties extensively and going through the records, we feel that a short question for consideration of this Court in this appeal has arisen Whether the decision of the Apex Court in the case of Steel Authority of India Ltd (supra) is encompassing and is whether applicable with full force to the factual profile of the case on hand?"

10. The Apex Court in the matter of Steel Authority of India Ltd (supra) in para 125(4) categorically observed as under :

"125 (4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment of Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."
(Emphasis supplied)

The Apex Court in Steel Authority of India Ltd. (supra) in para 120 observed as under :

"We have also perused all the Rules and forms prescribed thereunder. It is clear that at various stages there is involvement of the principal employer. On an exhaustive consideration of the provisions of the CLRA Act we have held above that neither they contemplate

> creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the Act on issuing notification under Section 10(1) of the CLRA Act, a fortiori much less can such a relationship be found to exist from the Rules and the forms made thereunder."

11. Now, therefore, there cannot be any slightest doubt that the ratio in Air India case is categorically overruled by the Apex Court in Steel Authority of India Limited case. True it is that as observed by the Apex Court in para 125(4), the effect of the decision in Steel Authority of India Ltd. would be prospectively, and any direction issued in pursuance of the ratio in Air India case, shall hold good and that the same shall not be set aside, altered or modified on the basis of the judgment in Steel Authority of India Ltd., in cases where such a direction has been given effect to and it has become final.

12. In this view of the matter, the only question which emerges is whether the direction given by the Industrial Tribunal or by the State Government or by this Court in this case relying upon the decision of the Apex Court in Air India case, has been given effect to and whether it has become final?

13. When we perused the factual data of this case, it is crystal clear that the Notification issued by the State Government, on 13.7.1999, abolishing the contract labour system in the establishment of the appellant qua security services, within a week, exactly, on 23rd of July, 1999, the present appellant challenged the above said Notification on various grounds by filing Special Civil Application No.5418/99 though the stay on the implementation of the Notification was obtained only on 28.10.1999 and some corrections were made in the order by this Court on 24.12.1999 granting stay in favour of the appellant - company by staying the implementation of the above said Notification on certain conditions.

14. It would be salutary to refer to the observations of the Apex Court in the decision of Steel Authority of India Limited in para 120. It is, unequivocally, made clear by the Apex Court that on an exhaustive consideration of the provisions of the Contract Labour Regulation & Abolition Act, it is clear that that neither they contemplate creation of direct relationship of master and servant between the principal employer and the

contract labour nor can such relationship be implied from the provisions of the Act on issuing notification under Section 10(1) of the CLRA Act, a fortiori much less can such a relationship be found to exist from the Rules and the forms made thereunder.

15. From the above, it is abundantly clear that there is no provision of law prevailing for creating direct relationship of employer and employee between the employer and the contract labourers on issuance of notification and, therefore, it could not be said that by issuing notification by the State Government abolishing contract labour, employees working as contract labourers become the direct employees of the employer. This is so because the Contract Labour (Regulation & Abolition) Act, 1970 is silent on this respect. True it may be that by issuing of notification (subject to judicial review) the contract labour system may be coming to an end but that itself by no stretch of reasoning, can be said to be creating a relationship of employer and employee between the contract labourers and the employer. This is made very clear by a decision of the Apex Court in the case of Gujarat Electricity Board Thermal Power Station, Ukai (supra), wherein, in paras 67 and 68, the Apex Court observed that the Contract Labour (Regulation & Abolition) Act, 1970 is not a complete code by itself, and the same is silent on the question of the status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate Government and, therefore, the question of determination of the status of the workmen is concerned, it remains open for decision by the industrial adjudicator. Meaning thereby that, there is no ipso facto or automatic absorption of the contract labour employees in the establishment of the employer merely by virtue of the notification abolishing the contract labour system and, therefore, this argument advanced on behalf of the respondent No.1 will have to be negatived.

16. Now, the second question which requires adjudication is whether the directions issued in pursuance of the Air India case, has been given effect to and whether it had become final. If so, then, the ratio laid down by the Apex Court in the case of Steel Authority of India Ltd. (supra), such directions shall hold good and shall not be set aside, altered or modified on the basis of the judgment of Steel Authority of India Ltd. In this regards also, it is beneficial to refer to the decision of the Apex Court in the matter of Gujarat Electricity Board vs. Hind Mazdoor Sabha (supra). In para 42 of the decision, the Apex Court was pleased to

observe that it is well settled that the exclusive authority to decide whether the contract labour should be abolished or not, is that of appropriate Government under Section 10 of the Act. The decision of the Government becomes final subject to, of course, judicial review on the usual grounds. Meaning thereby that the exclusive jurisdiction of the State Government to issue Notification under Section-10 of the Contract Labour (Regulation & Abolition) Act, 1970 is subject to judicial review, and it would become final if the same is challenged and passes through successfully under the scrutiny of the judicial review. One cannot be denied the right to challenge the action of the Government on the grounds available, according to basic law, i.e. Constitution of India. Judicial review is open to any Government decision, which is subject to challenge by virtue of law. It cannot therefore be said that issuance of Notification under the Contract Labour (Regulation & Abolition) Act, 1970 by virtue of power under Section-10 by the Government becomes final on the date of its issuance.

17. Judicial review has its own limitation. Meaning thereby to say that if the statute of the limitation provides the period of limitation for taking action to challenge the action of the Government, the same will have to be challenged within the prescribed period of limitation, and if such period lapses, undoubtedly, the decision of the Government becomes final, and does not remain thereafter subject to judicial review or challenge. Where no such limitation is prescribed by statute, then it has to be brought within the reasonable period of limitation. In other words, such challenge must be away from vice of delay and latches. When law provides right to challenge a Government decision, then the Government decision would not become final but always be subject to judicial review and unless and until, the right to challenge such decision in judicial review is lost or the decision is otherwise not challenged, such decision becomes final.

18. In the present case, the Notification was issued on 13th July, 1999 and on 23rd July, 1999, Special Civil Application No. 5418/99 came to be filed challenging the said Notification. The said Notification has always remained subject to judicial review. Though the stay is obtained only on 28.10.1999 against the implementation of the said Notification but when the challenge is made on 23.7.1999, against the issuance of such Notification, it cannot be said that such Notification had become final and the contract labour system so far the security is

concerned had come to an end.

19. Therefore, by no stretch of reasoning, it could be said that the issuance of the Notification itself and the directions given thereunder can be said to have become final and had been given effect to and, therefore, the matter would squarely covered by the ratio decided by the Apex Court in the case of Steel Authority of India Limited. In Steel Authority of India Ltd., the Apex Court observed that the status of the workmen employed under the contract labour will have to be decided by the adjudicator while Contract Labour (Regulation & Abolition) Act, 1970 is silent in this respect and, therefore, there is no automatic absorption, as contended on behalf of the respondent No.1. Secondly, as said above, till the pronouncement of the judgment in the case of Steel Authority of India Ltd, any direction issued relying upon the Air India case in this matter had not become final, but the directions have been travelling through the process of judicial review.

20. In this view of the matter, we are unable to persuade ourselves that by issuance of Notification under Section-10 of the Contract Labour (Regulation & Abolition) Act, 1970, the contract labour system comes to an end, and that if any action is required to be taken to absorb the workmen, is required to be taken by the management and since the management failed to implement the direction, the same have become final. In this view of the mater, we cannot endorse the view expressed by the learned Single Judge in the impugned decision.

21. In the result, this Appeal is allowed and the order impugned of the learned Single is set aside. In Special Civil Application No. 8385/2001 other grounds of maintainability of the Reference and Application Exh.35 are urged. It would therefore be in the interest of justice to decide the Spl. Civil Application No. 8385/2001 finally on all the grounds. While allowing the Appeal and setting aside the order of the learned Single Judge which is impugned in this matter, we direct to revive the Special Civil Application No. 8385/2001 to the file and we considered it to be expedient and appropriate and in the interest of justice, to direct that the Spl. C.A. No. 8385/2001 and Spl. C.A. No. 5418/1999 be heard together and finally disposed of as expeditiously as possible. As on date, the interim order passed in Spl. C.A. No. 5418/1999 staying the implementation and operation of the Notification of the State Government which is of dated 13.7.1999 is in full force, further we direct that further proceedings in

Reference (LTN) No. 730/98 (Old No. 272/98) shall be stayed till the final disposal of the Spl. Civil Application No. 8385/2001.

22. In view of the order passed in the Appeal, Civil Application No. 5791/2002 has no survival value and is disposed of accordingly.

(J.N. Bhatt, J.)

(J.R. Vora, J.)

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